(6)

No. 06-116

Supreme Court, U.S.
FILED
NOV 13 2006
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN,
ATTORNEY GENERAL OF GUAM,
Petitioner,

v.

FELIX P. CAMACHO,
GOVERNOR OF GUAM,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GUAM

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 19, 2006
CERTIORARI GRANTED SEPTEMBER 26, 2006

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IN THE SUPREME COURT OF GUAM

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

DOCKET SHEET FOR CRQ2003-01

[STAMP: RECEIVED
NOV 9 2006 8:35am
Attorney General's Office]

Doc No.	File Date	Received Date	Document Title
1		7/1/2003 12:11 PM	Certified Question fileed [sic] on 7/1/2003 12:11 PM
2		7/1/2003 12:42 PM	Payment of Docket Fee is filed on 7/1/2003 12:11 PM
3	7/1/2003 4:25 PM		Order: request for Declaratory Judgment is accepted, signed by Chief Justice F. Philip Carbullido, filed on 07/01/2003 04:25 PM
4	7/1/2003 4:30 PM		Order appointing Justice Benjamin J.F. Cruz, and Richard H. Benson as Justice Pro Temp, signed by Chief Justice F. Philip Carbullido, filed on 07/01/2003 04:30 PM
5	7/1/2003 4:31 PM		Notice of hearing filed on 07/01/2003 04:31 PM
6	7/2/2003 7:52 AM		Service Route Slip filed on 07/02/2003 07:52 AM

Doc No.	File Date	Received Date	Document Title
7	7/2/2003 7:52 AM		Declaration of Service on Atty. Moylan, received by Michele Duenas, filed on 7/2/2003 7:52 AM
8	7/2/2003 7:52 AM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 7/2/2003 7:52 AM
9	7/2/2003 7:52 AM		Declaration of Service on Senator Pangelinan, received by Daniel Ybarra, filed on 7/2/2003 7:52 AM
10	7/2/2003 7:52 AM		Declaration of Service on Atty. Terlaje, filed on 7/2/2003 7:52 AM
11	7/2/2003 7:52 AM		Service Route Slip filed on 7/2/2003 7:52 AM
12	7/2/2003 7:52 AM		Declaration of Service on Atty. Moylan, received by Michele Duenas, filed on 7/2/2003 7:52 AM
13	7/2/2003 7:52 AM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 7/2/2003 7:52 AM
14	7/2/2003 7:52 AM		Declaration of Service on Speaker Pangelinan, received by Daniel Ybarra, filed on 7/2/2003 7:52 AM
15	7/2/2003 7:52 AM		Declaration of Service on Atty. Teriaje, filed on 7/2/2003 7:52 AM
16	7/2/2003 7:52 AM		Service Route Slip filed on 7/2/2003 7:52 AM

Doc No.	File Date	Received Date	Document Title
17	7/2/2003 7:52 AM		Declaration of Service on Atty. Moylan, received by Michele Duenas, filed on 7/2/2003 07:52 AM
18	7/2/2003 7:52 AM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 7/2/2003 7:52 AM
19	7/2/2003 7:52 AM		Declaration of Service on Speaker Pangelinan, received by Daniel Ybarra, filed on 7/2/2003 7:52 AM
20	7/2/2003 7:52 AM		Declaration of Service on Atty. Teriaje, filed on 7/2/2003 7:52 AM
21	7/2/2003 11:06 AM		Order: all briefs filed by 3:00 pm on 7/7/03, opposition filed by 5:00 pm on 7/8/03, OA on 7/9/03 at 10:00 a.m., signed by Chief Justice F. Philip Carbullido, filed on 7/2/2003 11:06 AM
22	7/2/2003 1:39 PM		Service Route Slip filed on 07/02/2003 01:39 PM
23	7/2/2003 1:39 PM		Declaration of Service on Atty. Moylan, received by Joyce Siguenza, filed on 07/02/2003 01:39 PM
24	7/2/2003 1:39 PM		Declaration of Service on Atty. Clark, received by Alan Meno, filed on 07/02/2003 01:39 PM

Doc No.	File Date	Received Date	Document Title
25	7/2/2003 2:00 PM	7/2/2003 2:00 PM	MINUTES OF STATUS HEARING HELD ON JULY 2, 2003 AT 10:00 A.M. BEFORE CHIEF JUSTICE F. PHILIP CARBULLIDO, JUSTICE PRO TEMP BENJAMIN J.F. CRUZ AND JUSTICE PRO TEMP RICHARD BENSON. BRIEFING SCHEDULE AND ISSUES TO BE BRIEFED ISSUED. ORAL ARGUMENTS SCHEDULED FOR JULY 9, 2003 AT 10:00 A.M.
26	7/3/2003 3:18 PM		REQUEST FOR RECUSAL filed on 07/03/2003 03:18 PM
27	7/3/2003 4:10 PM		PROOF OF SERVICE filed on 07/03/2003 04:10 PM
28	7/7/2003 11:47 AM		ANSWER OF CHIEF JUSTICE F. PHILIP CARBULLIDO TO REQUEST FOR DISQUALIFICATION filed on 07/07/2003 11:47 AM
29	7/7/2003 11:49 AM		ANSWER OF JUSTICE PRO TEMPORE BENJAMIN J.F. CRUZ TO REQUEST FOR DISQUALIFICATION filed on 07/07/2003 11:49 AM
30	7/7/2003 11:57 AM		Order filed on 07/07/2003 11:57 AM appointing Justice Pro Tern pore Richard H. Benson to decide the requests for disqualification filed against the remaining panel members.

Doc No.	File Date	Received Date	Document Title
31	7/7/2003 2:46 PM		Respondent Government of Guam's Opening Brief filed on 07/07/2003 02:46 PM
32	7/7/2003 2:55 PM		Opening Brief on behalf of the Honorable Felix P. Camacho, filed on 07/07/2003 02:55 PM
33	7/7/2003 2:58 PM		Declaration of Artemio B. Ilagan in support of Governor Felix Camacho's request for declaratory judgment, filed on 07/07/2003 02:58 PM
34	7/7/2003 2:53 PM		Declaration of Bertha Duenas in support of Governor Felix Camacho's request for declaratory judgment, filed on 07/07/2003 02:53 PM
35	7/7/2003 2:57 PM		Declaration of Edward Untalan in support of Governor Felix Camacho's request for declaratory judgment, filed on 07/07/2003 02:57 PM
36	7/7/2003 3:05 PM		PROOF OF SERVICE filed on 07/07/2003 03:05 PM
37	7/7/2003 4:11 PM		Brief of Amicus Curiae filed on 07/07/2003 04:11 PM
38	7/7/2003 4:10 PM		PROOF OF SERVICE filed on 07/07/2003 04:10 PM
39	7/8/2003 4:30 PM		Order Denying Request for Disqualification, filed on 07/08/2003 04:30 PM
40	7/8/2003 4:42 PM		Respondent Reply Brief filed on 07/08/2003 04:42 PM

Doc No.	File Date	Received Date	Document Title
41	7/8/2003 4:42 PM		Opposition to Governor Felix P. Camacho filed on 07/08/2003 04:42 PM
42	7/9/2003 8:11 AM		PROOF OF SERVICE filed on 07/09/2003 08:11 AM
43	7/9/2003 9:11 AM		Reply to Opposition Brief filed on 07/09/2003 09:11 AM
44	7/9/2003 10:32 AM		PROOF OF SERVICE filed on 07/09/2003 10:32 AM
45	7/10/2003 9:04 AM		Service Route Slip filed on 07/10/2003 09:04 AM
46	7/10/2003 9:04 AM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 07/10/2003 09:04 AM
47	7/10/2003 9:04 AM		Declaration of Service on Atty. Moylan, received by Michele Duenas, filed on 07/10/2003 09:04 AM
48	7/10/2003 9:09 AM		Service Route Slip filed on 07/10/2003 09:09 AM
49	7/10/2003 9:08 AM		Declaration of Service on Atty. Moylan, received by Michele Duenas, filed on 07/10/2003 09:08 AM
50	7/10/2003 9:08 AM		Declaration of Service on Atty. Clark, received by Priscilla Santos, filed on 07/10/2003 09:08 AM

Doc No.	File Date	Received Date	Document Title
51	7/16/2003 9:37 AM	7/16/2003 9:37 AM	MINUTES OF ORAL ARGUMENTS HELD ON JULY 9, 2003 AT 10:00 A.M. BEFORE CHIEF JUSTICE F. PHILIP CARBULLIDO, JUSTICE PRO TEMP BENJAMIN J.F. CRUZ AND JUSTICE PRO TEMP RICHARD BENSON. MATTER TAKEN UNDER ADVISEMENT.
52	7/23/2003 1:13 PM		Opinion: issuance of bonds authorized under P.L. 27-19 would not violate section 11 of the Organic Act signed by Chief Justice F. Philip Carbullido, Justice Pro Tempore Richard H. Benson, Justice Pro Tempore Benjamin J.F. Cruz, filed on 07/23/2003 01:13 PM
53	7/23/2003 2:27 PM		Service Route Slip filed on 07/23/2003 02:27 PM
54	7/23/2003 2:27 PM		Declaration of Service on Atty. Moylan, received by Michele Duenas, filed on 07/23/2003 02:27 PM
55	7/23/2003 2:28 PM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 07/23/2003 02:28 PM
56	7/28/2003 9:14 AM		Notice of Entry on Docket filed on 7/28/2003 09:14 AM
57		8/15/2003 4:51 PM	Response to PETITION FOR CERTIORARI TO NINTH CIRCUIT received on 08/15/2003 04:51 PM

Doc No.	File Date	Received Date	Document Title
58		10/27/2003 10:30 AM	Order received from the Ninth Circuit, on 10/27/2003 10:30 AM
59		11/4/2003 10:00 AM	Motion to Expedite received on 11/04/2003 10:00 AM
60		11/4/2003 10:00 AM	Declaration of Arthur B. Clark in support of Motion to Expedite, received on 11/04/2003 10:00 AM
61		11/4/2003 10:00 AM	Declaration of Felix P. Camacho, received on 11/04/2003 10:00 AM
62		11/17/2003 11:20 AM	Respondent's Reply to Petitioner's Response to Respondent's motion to Expedite, received on 11/17/2003 11:20 AM
63		11/17/2003 11:20 AM	Declaration of Arthur B. Clark, received on 11/17/2003 11:20 AM
64	8/15/2003 2:20 PM		Transcript (copies) filed on 08/15/2003 02:20 PM
65		11/14/2003 5:00 PM	Certificate of Record to the Ninth Circuit, sent on 11/14/2003 05:00 PM
66	11/17/2003 1:49 PM		Amended cover page filed by the court reporter filed on 11/17/2003 01:49 PM
67	11/18/2003 3:05 PM		Service Route Slip filed on 11/18/2003 3:05 PM
68	11/18/2003 3:05 PM		Declaration of Service on Atty. Moylan, received by Flora Salas, filed on 11/18/2003 3:05 PM
69	11/18/2003 3:05 PM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 11/18/2003 03:05 PM

Doc No.	File Date	Received Date	Document Title
70		12/5/2003 4:30 PM	PETITION FOR CERTIORARI TO NINTH CIRCUIT received on 12/05/2003 04:30 PM
71		12/29/2003 10:35 PM	Opposition to Motion for enlargement of time to file petitioner's opening brief, received on 12/29/2003 10:35 PM
72		02/09/2004 10 AM	RESPONDENT GOVERNOR OF GUAM'S Opposition Brief to the Ninth Circuit received on 02/09/2004 10:00 AM
73		3/3/2004 10:00 AM	Memo received from the Ninth Circuit on 03/03/2004 10:00 AM
74		2/24/2006 11:00 AM	Order received on 2/24/2006 11:00 AM from the 9th Circuit Court of Appeals. Case is hereby resubmitted effective February 1, 2006. 9th circuit case no. 03-72836
75		04/10/2006 10:30 AM	JUDGMENT received from the Ninth Circuit, case is DISMISSED FOR LACK OF JURISDICTION, filed 3/28/06, received on 04/10/2006 10:30 AM
76		07/31/2006 02:00 PM	Memo Or Letter Of Correspondence received on 07/31/2006 02:00 PM Frame the United States Supreme Court. The petition for writ of certiorari was filed on 7/19/06 and placed on the docket on 7/25/06 as No. 06-0116.

Doc No.	File Date	Received Date	Document Title
77	8/7/2006 3:51 PM		PETITION FOR CERTIORARI TO US SUPREME COURT filed on 8/7/2006 3:51 PM
78		10/3/2006 3:10 PM	Notice from U.S. Supreme Court, received on 10/03/2006 03:10 PM

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUGLAS B. MOYLAN,
Petitioner,
v.
FELIX P. CAMACHO,
Respondent.

GENERAL DOCKET
FOR CASE NO. 03-72836

[Docket as of June 7, 2006]

8/1/03	FILED PETITION FOR WRIT OF CERTIORARI FROM SUPREME COURT OF GUAM, DOCKETED CAUSE AND ENTERDED APPEARANCES OF COUNSEL. NOTIFIED RESPONDENT OF FILING. (MOATT) [03-72836] (wp)
8/15/03	Filed Respondent Felix P. Camacho's response to petition for writ of certorari [sic]; served on 8/15/03. (MOATT) [03-72836] (af)
10/23/03	Filed Order (Kim M. WARDLAW, Marsha S. BERZON, Richard R. CLIFTON,) The petition for a writ of certiorari to review a final decision of the Supreme Ct of Guam is GRANTED. The Clk of the Supreme of Guam shall file the COR with the Clk of this ct by 11/17/03. (cite) Petr's opening brf on review is due 12/29/03; resp's ans brf is due 1/28/04; and the petr's optional reply brf is due 14 days after svc of the ans brf. Briefing shall comply with FRAP 32. [03-72836] (af)

10/23/03	Sent a copy of 10/23/03 order of the ct to the Supreme Ct of Guam @ 120 West O'Brien Drive, Ste 300, Hagatna, GU 96910. [03-72836] (af)
11/3/03	Received Resp Felix P. Camacho's mtn to expedite; no POS. (Work in process; PROMO/tah) [03-72836] (af)
11/14/03	Filed order (Deputy Clerk: tah) the court has received the respondent's motion to expedite and petitioner's response. The motion to expedite is granted is part. The briefing schedule established in the 10/23/03 order shall remain in effect. This case shall be placed on the next available calendar after briefing is completed. [4888676-1] [03-72836] (dv)
11/14/03	Received Resp Felix P. Camacho's reply to petr's response to resp's mtn to expedite; declaration of Arthur B. Clark; served on 11/17/03. (FYI/PROMO; casefile/nan per promo) [03-72836] (af)
11/17/03	Filed certificate of record on appeal RT filed in DC 11/14/03. (CASEFILES) [03-72836] (af)
12/24/03	14 day oral extension by phone of time to file Petitioner brief. [03-72836] appellants' brief due 1/12/04; appellees' brief due 2/11/04; the optional reply brief is due 14 days from service of the answering brief. (cg)
12/24/03	Received Respondent Felix P. Camacho opposition to mtn for enlargement of time to file petr's opening brf; served on 12/26/03. (No action necessary per PROMO/tah) [03-72836] (af)
1/14/04	Filed Original and 15 copies Petitioner Douglas B. Moylan opening brief (Informal: no) 48 pages and five excerpts of record in 1 volume; served on 1/12/04. [03-72836] (af)
2/9/04	Calendar check performed [03-72836] (aw)

2/9/04	Filed Original and 15 copies appellee Felix P. Camacho's 31 pages brief, -zero- Exc. vol; served on 2/7/04. [03-72836] (af)
2/11/04	Calendar materials being prepared. [03-72836] [03-72836] (aw)
2/19/04	CALENDARED: Hawaii May 6, 2004 9:00 AM Courtroom Sixth Floor [03-72836] (rei)
3/1/04	Filed Original and 15 copies Douglas B. Moylan reply brief, (Informal: no) 18 pages; served on 2/23/04. (PANEL) [03-72836] (af)
5/6/04	ARGUED AND SUBMITTED TO Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON [03-72836] (pi)
12/8/04	Filed Felix P. Camacho RENEWED mtn to expedite; served on 12/8/04. (faxed to PANEL) [03-72836] (af)
12/15/04	Filed Order (Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON,) In response to the renewed mtn to expedite, filed on 12/8/04, the parties are informed that no opinion in this cs until the cs of Santos v. People of Guam, Cs No. 03-70472, is decided, clarifying our continued certiorari jurisdiction over decisions from the Supreme Ct of Guam. [03-72836] (af)
12/22/04	Filed Order (Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON,) Submission of this case is withdrawn and deferred pending a ruling on Santos v. People of Guam, No. 03-70472. [03-72836] (af)
2/1/06	Filed Order (Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON,) This cs is hereby resubmitted effective 2/1/06. [03-72836] (af)

2/1/06	Case resubmitted on this date to Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON. (See previous deferral of submission.) Order filed: 2/1/06. [03-72836] (af)
3/6/06	Order filed, on 10/30/04, Congress amended 48 U.S.C. 1424-2 and w/d the 9th Circuit's jurisdiction to review appeals from Guam courts. This ct recently held in Santos v. Guam, (cite), that all appeals from Guam courts currently pending in the 9th Cir., regardless of the date filed, must be dismissed for lack jurisdiction. This appeal, therefore, is DISMISSED. (Terminated on the Merits after Oral Hearing; Dismissed; Written, Unsigned, Unpublished. Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON) [03-72836] (af)
3/28/06	MANDATE ISSUED [03-72836] (ea)
6/6/06	Received letter from the Supreme Court dated 5/31/06 re: The application for an ext. of time w/in which to file a petition for a writ of certiorari.....extended the time to and including 7/19/06. (FYI/PNL) [03-72836] (af)

IN THE SUPREME COURT OF GUAM

No. CRQ03-001

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

[STAMP: FILED
SUPREME COURT OF GUAM
JUL 1 12:11PM '03]

REQUEST FOR DECLARATORY JUDGMENT (7 G.C.A. § 4104)

COMES NOW, Felix P. Camacho, Governor of Guam, pursuant to 7 Guam Code Annotated ("G.C.A.") § 4104 and Rules 26 and 27 of the Guam Rules of Appellate Procedure and requests that the Court issue a declaratory judgment interpreting and applying a portion of Section 11 of the Organic Act of Guam (codified at 48 U.S.C. § 1423a) relating to the debt limitation of the government of Guam.

1. Felix P. Camacho is the Governor of Guam and has standing to request a declaratory judgment from this Court pursuant to 7 G.C.A. § 4104.

JURISDICTION

2. This Court has original jurisdiction over this matter pursuant to 48 U.S.C. § 1424-1 and 7 G.C.A. § 4104.

3. With respect to the exercise of jurisdiction by this Court under 7 G.C.A. § 4104, this Court has held that:

> [T]o pass jurisdictional muster, a party seeking a declaratory judgment must satisfy three requirements: (1) the issue raised must be a matter of great importance; (2) the issue must be such that its

> resolution through the normal process of law is inappropriate as it would cause undue delay; and (3) the subject matter of the inquiry is appropriate for section 4104 review. There are only two subjects appropriate for section 4104 review: questions that require an interpretation of a federal or local law lying within the jurisdiction of Guam courts to decide, and questions that affect the powers and duties of the Governor and the operation of the executive branch....

In re Request of Gov. Carl T.C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35, 2002 Guam 1, ¶ 9 (Feb. 7, 2002) (internal citations omitted).

MATTER OF GREAT IMPORTANCE

4. Public interest "signifies an importance of the issue to the body politic, the community, in the sense that the operations of the government maybe substantially affected one way or the other by the issue's resolution." *In re Request of Governor Carl T. C. Gutierrez for a Declaratory Judgment as to the Organicity of Guam Public Law 22-42*, 1996 Guam 4, ¶ 4 (Order Oct. 24, 1996). This Request centers around the ability of the Governor to issue the bonds and bond anticipation notes authorized by Public Law 27-19.

5. On April 29, 2003 Bill 47 (COR) became Public Law 27-19 by signature of Governor Camacho. Bill 47 (COR) was introduced by the Committee on Economic Development, Retirement, Investments, Public Works & Regulatory Functions by request of Governor Camacho.

6. When the 27th Guam Legislature passed Bill No. 47, it found "that the accumulated General Fund deficit will result in current revenues available in the General Fund being insufficient to pay certain obligations of the General Fund and that a mechanism is needed to provide the necessary cash to the General Fund to pay such obligations until a surplus of current revenues over current expenditures can retire the deficit." Public Law 27-19, § 1 (2003).

7. Public Law 27-19 authorizes the Governor to issue government of Guam bonds and bond anticipation notes for the purpose of paying certain government of Guam expenses. Specifically, Public Law 27-19 authorizes the issuance of bonds in an aggregate principal amount not to exceed the amount necessary to provide $218,309,857 for the payment of certain General Fund expenses; and to provide $200,000,000 to fund an escrow to pay the debt service on all or a portion of the existing government indebtedness for the Government of Guam General Obligations Bonds, 1993 Series A, at a matched maturity.

8. Without the issuance of the bonds authorized by Public Law 27-19, the government is likely to face mass lay-offs, payless paydays and/or the shutdown of certain government operations.

9. The determination of the Governor's ability to issue the bonds authorized by P.L. 27-19 is clearly a matter of great importance to the government and the Island. Indeed, it may be the single-most important issues [sic] facing the government today.

REQUEST APPROPRIATE TO AVOID UNDUE DELAY

10. Related to the magnitude of this Request is the timing within which the government must obtain bond financing to avoid the shutdown of government operations, payless paydays and mass lay-offs. Intended to provide a fast track for the initiation of cases before the Supreme Court of Guam, 7 G.C.A. § 4104 provides a means by which "rulings could be obtained on important issues of law without time consuming litigation in the inferior court." *In re Request of Governor Carl T. C. Gutierrez for a Declaratory Judgment as to the Organicity of Guam Public Law 22-42*, 1996 Guam 4, ¶ 8 (Order Oct. 24, 1996). Undue delay would result from litigation of this issue in the lower court since it is likely that whatever the determination of the lower court, there will be an appeal of the decision. More importantly, however, seeking relief in this Court in the first instance would avoid delay

in the resolution of this urgent issue that substantially affects the operations of the government and the community as a whole and would reduce the harm that would be caused by the further delay in the issuance of the bonds. If the matter is first brought before the Superior Court of Guam, even on an expedited basis, a decision is unlikely for several months. The government's current financial condition will not permit several months of delay. The bond financing is critical to the continued operations of all branches and sectors of the government of Guam. Time is of the essence in having this matter resolved by the highest court of the Island.

SUBJECT MATTER OF REQUEST APPROPRIATE FOR REVIEW

11. The Court has identified two subjects appropriate for section 4104 review: questions that require an interpretation of a federal or local law lying within the jurisdiction of Guam courts to decide, and questions that affect the powers and duties of the Governor and the operation of the executive branch. *See In re Request of Gov. Carl T. C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 Guam 1 at ¶ 9. This Request involves both subjects. The Governor is requesting an interpretation of a provision of the Organic Act of Guam (Section 11) and of certain local tax laws (11 G.C.A. §§ 24102, 24305-24307), as those provisions apply to the functions and duties of the Governor in carrying forth the mandate of the Legislature set forth in Public Law 27-19.

12. Public Law 27-19 empowers the Governor to execute contracts necessary for the issuance of government-backed bonds. The Attorney General of Guam has opined that, "[T]he Government of Guam cannot borrow any money since we are unable to determine whether the Organic Act maximum ceiling for borrowing has in fact been already exceeded," thus clearly implicating the Governor's ability to carry out his duties as authorized by P.L. 27-19. *See* Correspondence from the Attorney General dated May 14, 2003, attached as Exhibit "A." Accordingly, the issues being

brought before this Court are the types permitted by section 4104.

REQUEST

13. Governor Camacho seeks a declaratory judgment on the following questions:

a. Whether the public indebtedness of Guam, after the contemplated issue of bonds authorized by Public Law 27-19, will be within 10% of the aggregate tax valuation of the property in Guam, the maximum permitted by Section 11 of the Organic Act of Guam; and

b. Whether "aggregate tax valuation of the property on Guam" as that phrase is used in Section 11 of the Organic Act of Guam means one hundred percent (100%) of the appraised value of the taxable property on Guam; and

c. Whether even if one or more of the triennial valuations required by 11 G.C.A. § 24306 has not been conducted, the Government may conclusively presume that the "aggregate tax valuation of the property on Guam" as used in Section 11 of the Organic Act of Guam is not less than the aggregate appraised value ascertained by the Director of the Department of Revenue and Taxation ("DRT"), as assessor, pursuant to the last completed valuation conducted pursuant to 11 G.C.A. § 24306 as supplemented by the annual adjustments provided for in 11 G.C.A. § 24307.

14. Section 11 of the Organic Act of Guam (48 U.S.C. § 1423a) authorizes the issuance of bonds by the government and also sets a limitation on the public indebtedness of the government of Guam as follows:

> [W]hen necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam.

48 U.S.C. § 1423a (emphasis added).

15. "Aggregate tax valuation of the property in Guam" is not defined in the Organic Act of Guam.

16. The amount of the current outstanding public indebtedness of Guam is approximately $384,678,135 (general and limited obligation bonds).

17. The contemplated issue of new bonds authorized by Public Law 27-19 is in the anticipated amount of $393,000,000, which amount includes principal, insurance and other related costs, as authorized by 5 G.C.A. § 1520(a), as added by Public Law 27-19, § 2, to pay down certain General Fund obligations (approximately $246,000,000) and to refund the Government of Guam General Obligations Bonds, 1993 Series A (approximately $147,000,000), which amount includes principal, insurance and other related costs.

18. The total public indebtedness of Guam after the contemplated issue of bonds authorized by Public Law 27-19 will be in the approximate amount of $642,680,390 (general and limited obligation bonds).

19. Since 1995, the Tax Assessor of Guam, the Director of the Department of Revenue and Taxation, has determined the value of property in Guam based on the 1993 triennial valuation with annual adjustments made to properties that have been improved or suffered loss and based on value alterations by the Board of Equalization. Such adjustments and alterations are made by the Department of Revenue and Taxation and the Board of Equalization pursuant to 11 G.C.A. § 24307 and 11 G.C.A. § 24501 et seq., respectively.

20. It has been the government of Guam's policy for the past ten-plus years to certify the "aggregate tax valuation of the property in Guam" for purposes of bond issuances based upon 100% of the appraised value of the taxable property on Guam derived from the most recent real property tax rolls.

21. The appraised value of the real property in Guam in 2002 has been certified by the Government of Guam at $11.3 billion, ten percent (10%) of which is $1.13 billion.

22. Based on the foregoing, it is clear that the public indebtedness of Guam, after the contemplated issue of bonds

authorized by Public Law 27-19, will be within the maximum permitted by Section 11 of the Organic Act of Guam.

23. Notwithstanding the certification by the Government of Guam as to the appraised value of the real property in Guam, the Attorney General of Guam has taken the position that "aggregate tax valuation" is the equivalent of "value" as that term is defined in Guam's Real Property Tax Law (i.e., 35% of the appraised value) and that triennial valuations under 11 G.C.A. § 24306 must be completed in order to determine the aggregate tax valuation of property in Guam, which positions have effectively halted the issuance of the bonds authorized by Public Law 27-19. *See* Exhibit "A" and additional correspondence from the Attorney General dated May 14, May 22, and June 27, 2003, which are attached hereto as Exhibits "B," "C" and "D."

24. In light of the dispute caused by the Attorney General over whether the issuance of bonds pursuant to Public Law 27-19 will comply with the mandates of Section 11 of the Organic Act of Guam, a final and conclusive resolution of that question by this Honorable Court is required.

PRAYER FOR RELIEF

WHEREFORE, Governor Camacho asks the Court for a judgment declaring that:

1. The public indebtedness of Guam, after the contemplated issue of bonds authorized by Public Law 27-19, will be within 10% of the aggregate tax valuation of the property in Guam, the maximum permitted by Section 11 of the Organic Act of Guam; and

2. "Aggregate tax valuation of the property on Guam" as that phrase is used in Section 11 of the Organic Act of Guam means one hundred percent (100%) of the appraised value of the taxable property on Guam;

3. Even if one or more of the triennial valuations required by 11 G.C.A. § 24306 has not been conducted, the Government may conclusively presume that the "aggregate tax valuation of the property on Guam" as used in Section 11 of the Organic Act of Guam is not less than the aggregate

appraised value ascertained by the Director of the Department of Revenue and Taxation ("DRT"), as assessor, pursuant to the last completed valuation conducted pursuant to 11 G.C.A. § 24306 as supplemented by the annual adjustments provided for in 11 G.C.A. § 24307.

Dated this 1st day of July, 2003.

CALVO AND CLARK, LLP
Attorneys at Law
Attorneys for the
Honorable Felix P. Camacho
Governor of Guam

By: /s/
ARTHUR B. CLARK

VERIFICATION

GUAM, U.S.A.)
) ss.:
City of Hagåtña)

The undersigned, deposes and says: That he is the petitioner in the foregoing Request for Declaratory Judgment; that the facts contained therein are true and correct to the best of his knowledge and belief, except as to the matters stated upon information and belief; and as to those matters, he believes them to be true.

DATED this 1st day of July, 2003.

/s/
FELIX P. CAMACHO

SUBSCRIBED AND SWORN to before me on the day and year first above-written.

/s/ Melissa A. Tydingco
Notary Public
My Commission Expires: 10/4/04

[NOTARIAL SEAL]

EXHIBIT "A"

[SEAL]
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May 14, 2003

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Office of *I Maga'lahen Guåhan*
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Hagåtña, Guam 96910

The Honorable Ben Pangelinan
Speaker
Mina' Bente Siete I Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

SUBJECT: $248,000,000+ LOAN APPROVAL; P.L. NO. 27-19

Dear Governor Camacho and Speaker Pangelinan:

This Office has recently conducted a *preliminary* review of Public Law Number 27-19, entitled "AN ACT TO *ADD* §1520 TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNOR OF GUAM, I MAGA'LAHEN GUÅHAN, TO ISSUE GOVERNMENT OF GUAM BONDS AND BOND ANTICIPATION NOTES FOR THE PURPOSE OF PAYING CERTAIN GOVERNMENT OF GUAM EXPENSES; AND TO *AMEND* FOR RELATED PURPOSES CERTAIN RELATED PROVISIONS OF LAW."

As a courtesy I respectfully advise you that the undersigned Attorney General will *not* be able to execute the loan given the current posture of the law, and facts as I understand them.

According to 5 G.C.A. § 22601, *Execution of Contracts*, the undersigned Attorney General is required by law to review, and if legally correct, approve all contracts for the Government of Guam. Section 22601 states,

> **"Section 22601. Execution of Contracts.** All contracts shall, after approval of the Attorney General, be submitted to the Governor for his signature. All contracts of whatever nature shall be executed upon the approval of the Governor."

Although Public Law Number 27-19:2 provides that the Board of Directors for the Guam Economic Development Authority must approve the bonds prior to their issuance, it does *not* discharge the undersigned's Office from the responsibility to review, and if legally correct, execute the loan obligation contract.

According to the 1950 Organic Act of Guam, 48 U.S.C. § 1423a, Congress limited the power of the Government of Guam to borrow as follows,

> "... Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 16 per centum of the aggregate tax valuation of property in Guam. ..."

Guam law requires that the valuation of property for tax purposes be conducted every three (3) years. Section 24306 of Title 11 of the Guam Code Annotated provides,

> "**Section 24306. Same: Valuation.** For the calendar year 1977 the valuation of all property shall be the 1978 valuation as shown on the assessment roll of the government for 1976, provided, however, that in instances where property has been either improved or suffered loss in 1977 the assessor shall take into consideration such improvement or loss and adjust the assessment roll for such property accordingly. Commencing with the first Monday in March of 1978 and continuing every three (3) years thereafter the assessor shall reascertain the value of all property in Guam and such valuation shall be used as the basis for assessment during the annual adjustments for property which has been either improved or suffered loss, as provided by § 24307." (Emphasis added).

The undersigned is informed that the last property assessment occurred in 1993, to become effective in 1995. The undersigned Attorney General finds that although the Organic Act places a ceiling on the maximum loan, Guam law places a requirement that the valuation used in the Organic Act loan ceiling, 48 U.S.C. § 1423a, be applied.

Based upon the foregoing laws, the 1993 valuation has long since expired, and the over $248,000,000 loan legislation cannot be executed until a new valuation is conducted. Further, common sense dictates that our economic condition is much worse today than in 1993, and is manifested in our need to borrow so much money through Public Law Number 27-19, leading to the logical conclusion that the 1993 valuation is no longer accurate and in fact is probably significantly lower.

The undersigned Attorney General recommends that the Government of Guam *immediately* conduct its property assessment as required by law. Otherwise, if the loan is immediately required, this Office is prepared to seek a declaratory judgment on behalf of either or both of your Offices, requesting from the Supreme Court of Guam, pursuant to 7 G.C.A. § 4104, a declaratory judgment whether another properly assessment is required by Guam law to borrow. *However*, the undersigned Attorney General's position is that the Government of Guam cannot borrow any money since we are unable to determine whether the Organic Act maximum ceiling for borrowing has in fact been already exceeded.

According to figures we received, the 1993 property valuation (effective 1995) was for $4,384,422,245. I understand that the tax valuation is 35% of said property valuation, making the aggregate tax valuation $1,534,547,785.75. Under the Organic Act, our maximum borrowing capacity ("10% in excess of aggregate tax valuation" back in 1993 (effective 1995)) was $1,688,002,564.32. *However*, the legal problem is that the figure for determining our maximum loan "ceiling" has long since expired and can no longer be used. Without knowing what is the maximum borrowing limit, I cannot determine if we have exceeded said ceiling given the Government of Guam's current outstanding loans, thereby ensuring compliance with the Organic Act requirement, and therefore sign the bond issuance.

The undersigned does *not* undertake issuing this letter lightly, but must comply with not only the letter of the law,

but the spirit of it as well. We transmit this letter in order to try to provide as much advance notice as possible. The Organic Act provision is quite clear in its mandate that no public indebtedness shall be allowed in excess of 10% of the aggregate tax valuation, but that valuation has long since expired.

Please call me if you have any questions. Thank you.

Sincerely,

/s/
Douglas B. Moylan

cc: Senator Mark Forbes, Legislative Minority Leader

EXHIBIT "B"

[SEAL]

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May 14, 2003

The Honorable Felix P. Camacho
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The Honorable Ben Pangelinan
Speaker
Mina' Bente Siete I Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

SUBJECT: $248,000,000+ LOAN APPROVAL; P.L. NO. 27-19

Dear Governor Camacho and Speaker Pangelinan:

In furtherance of the undersigned's letter today, the *maximum* borrowing authority of the Government of Guam in 1993 under the Organic Act should be $153,454,778.56 (10% of $1,534,547,785.75). The figure in the undersigned's letter read "$1,688,002,564.32" on page 3.

Thank you for your attention to this matter.

Sincerely,

/s/
Douglas B. Moylan

cc: Senator Mark Forbes, Legislative Minority Leader

EXHIBIT "C"

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May 22, 2003

The Honorable Felix P. Camacho
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The Honorable Ben Pangelinan
Speaker
Mina' Bente Siete I Liheslaturan Guåhan
155 Hesler Street

Hagåtña, Guam 96910

SUBJECT: $248,000,000+ LOAN APPROVAL; P.L. NO. 27-19

Dear Governor Camacho and Speaker Pangelinan:

Earlier this week the undersigned Attorney General met with Lt. Governor Kaleo Moylan and Vice-Speaker Aguon. Guam Economic Development and Commerce Authority ("GEDCA") officials and their local counsel were likewise present

Based upon our conversation I now see two (2) problems facing this Office's execution of the loan indenture authorized in Public Law Number 27-19, prompting me to again request that you immediately authorize a petition be brought before the Supreme Court of Guam for declaratory judgment relief under 7 G.C.A. § 4104. Those problems are:

1. What is the value to gauge our calculations on (actual assessed land value (11 G.C.A. § 24306) or extrapolated values based upon projections and estimates); and

2. What definition to apply for "*aggregate tax valuation.*"

GEDCA's definition for "*aggregate lax valuation,*" used by Mr. Dirks, GEDCA's bond counsel, 1 understand, is Fair Market Value ("FMV") less exemption(s), which will give an approximately $1.1B loan ceiling, using their extrapolated property value figures. The Government of Guam currently owes about $380M. Under their valuation and definition the Government of Guam can still borrow money.

However, if we use the definition in the Guam Code Annotated and used by the Department of Revenue and Taxation for "*aggregate tax valuation,*" and applying GEDCA's extrapolated property value figures, our debt ceiling is about $380M, which the Government of Guam has already reached. I am inclined to decline signing the bond indenture because of the Government's failure to perform an actual assessment and consequently not understand our true value of property on Guam, and because the definition that is being utilized by GEDCA is inconsistent with how the Gov-

ernment of Guam has been valuing land for property tax purposes.

Consequently, based upon our Monday, May 19, 2003 meeting. I remain unconvinced that Guam is legally permitted to engage in any further loans. I understand that a telephone conference is being arranged with GEDCA's bond counsel, Mr. Stan Dirks to further discuss this matter though and I remain willing to explore further discussion and options. I am also troubled by statements to change Guam law to achieve the goal to permit the Government to borrow more money.

Finally, please note that I previously transmitted legislation to permit the Attorney General to seek declaratory relief before the High Court, like yourselves, anticipating situations such as this might arise. The undersigned Attorney General remains prepared to apply before the High Court on behalf of the People if you are reluctant to do so yourselves to finally resolve this important issue. Attorneys opinions do not give the finality which the High Court can provide.

Please call me if you have any questions. Thank you.

Sincerely,

/s/
Douglas B. Moylan

cc: The Honorable Kaleo S. Moylan, Lt. Governor of Guam
The Honorable Frank Aguon, Vice-Speaker
The Honorable Mark Forbes, Senator and Legislative Minority Leader

EXHIBIT "D"

[SEAL]
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June 27, 2003

The Honorable Felix P. Camacho
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P.O. Box 2950
Hagåtña, Guam 96910

SUBJECT: BORROWING CEILING

Dear Governor Camacho:

Thank you for your letter of June 26, 2003, inviting further dialogue regarding the legality of issuance of the bonds pursuant to Public Law Number 27-19. Counsel for the Guam Economic Development and Commerce Authority also provided us with the benefit of some of his research this morning, and the materials are being reviewed carefully.

While this Office hopes to find an acceptable resolution of our differences regarding issuance of bonds, the Supreme Court of Guam application should not be further delayed, given your stated urgency in the issues facing our Government. Our primary recommendation remains to perform an actual appraisal, whether as required by law or in an expedited form ratified by the legislature.

Unfortunately, Public Law Number 27-21 does *not* provide a complete resolution. It defines "*aggregate tax value*," but such a local definition cannot change the actual value of real estate and improvements on Guam. Moreover, local law

cannot define the meaning of this entire phrase. Previously, we suggested that Congress' use of the term "tax" relegated this definition to how Guam actually taxed real estate and improvements on Guam, such as thirty-five percent (35%) of appraised value formula contained in Guam law. This remains a concern, but is *not* determinative since we have yet to establish an accurate and reliable value for real estate and improvements on Guam, which only an actual appraisal could remedy.

Of course, we wish that Guam's market conditions were less dismal, but creating a refined value definition simply does *not* change the reality that real estate values have materially deteriorated on Guam in the last several years. The debt ceiling contained in § 11 of the Organic Act is simply a credit limit, and borrowers just don't have the luxury of raising credit limits to suit their financial needs, no matter how dire those needs may be.

Clearly, full analysis of the debt ceiling requires answering the following two (2) questions:

> 1. How much is the aggregate value of the taxable property on Guam? *and*
>
> 2. How much indebtedness has already been incurred?

With respect to the first question, it remains our position that the 1993 appraisal cannot be used anymore to achieve a reasonable analysis of the actual current value of properties on Guam. Nor can we haphazardly adopt a figure which should have been based upon an actual 1999 appraisal, but was not. Further, we believe that the lack of resources and a deficient computer system upon which the Department of Revenue and Taxation has been forced to rely, have resulted in a materially unreliable, outdated and inaccurate annual update of that appraisal. The Board of Equalization valuations from 1995 through 2002, for example, indicate a net increase in property values of almost $1.3 billion, ending in a "value" of $11.3 billion, including exempt property.

Since Public Law Number 27-19:2(a) specifically prohibits its issuance of bonds in violation of the debt limitation provision of the Organic Act, it follows that approval of a bond issue must be preceded by reasonably founded assurances that the limitation has *not* been exceeded. Please let me know what is being considered indebtedness for that purpose.

The undersigned Attorney General remains open to further discussion and requests that your counsel please work with us to structure the petition you intend to file before the Supreme Court of Guam to identify all the relevant issues. Thank you.

Sincerely,

/s/
Douglas B. Moylan

IN THE SUPREME COURT OF GUAM

No. CRQ03-001

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

[STAMP: FILED
SUPREME COURT OF GUAM
JUL 1 4:25PM '03]

ORDER

This matter comes before the court pursuant to a Request for Declaratory Judgment filed by the Governor of Guam, Felix P. Camacho ("the Governor"), in the above-captioned matter on July 1, 2003. The Governor requests that this court issue a declaratory judgment under Title 7 GCA § 4104, regarding the interpretation of section 1423a of the Organic Act of Guam (codified at 48 U.S.C. § 1423a).

This court has original jurisdiction to render declaratory judgments pursuant to Title 7 GCA § 4104. However, in order for this court's jurisdiction to be properly invoked through section 4104, any request for declaratory judgment must satisfy three jurisdictional requirements, articulated in *In re Request of Gutierrez*, 2002 Guam 1, ¶ 9, which follow:

> (1) the subject matter of the inquiry must be appropriate for section 4104 review;
>
> (2) the issue raised must be a matter of great public importance; and
>
> (3) the issue must be such that its resolution through the normal process of law is inappropriate as it would cause undue delay.

See In re Request of Gutierrez, 2002 Guam 1 at ¶ 9 (citing 7 GCA § 4104).

A. Subject Matter of the Inquiry

In re Request of Gutierrez enumerates the two subject matters appropriate for an inquiry under 7 GCA § 4104. They are (1) questions that require an interpretation of a federal or local law lying within the jurisdiction of Guam courts to decide; and (2) questions that affect the powers and duties of the Governor and the operation of the executive branch, or of the Legislature. *See In re Request of Guritierrez*, 2002 Guam 1 at ¶ 9.

According to the request, Public Law 27-19 "authorizes the Governor to issue government bonds and bond anticipation notes for the purpose of paying certain government of Guam expenses." Request for Declaratory Judgment, p. 2, ¶ 7. However, "[t]he Attorney General of Guam has opined that, '[T]he Government of Guam cannot borrow any money since we are unable to determine whether the Organic Act maximum ceiling for borrowing has in fact been already exceeded.' " Request for Declaratory Judgment, p. 4, ¶ 12.

Applying the subject matter jurisdictional requirement to the challenges brought forth by the Governor, the court finds that the questions of the interpretation of 48 USC § 1423a, and Public Law 27-19, as well questions involving the powers and duties of the Governor and the operation of the executive branch, are properly before this court pursuant to 7 GCA § 4104.

B. Great Public Importance

"[P]ublic interest signifies an importance of the issue to the body politic, the community, in the sense that the operations of the government may be substantially affected one way or the other by the issue's resolution." *Id.* at ¶¶ 26-28. The Governor's request states that, without the issuance of the bonds as mandated by Public Law 27-19, "the government is likely to face mass lay-offs, payless paydays and/or

the shutdown of certain government operations." Request for Declaratory Judgment, p. 3, ¶ 8.

The court finds that questions of the interpretation of 48 USC § 1423a, in light of Public Law 27-19, as well questions involving the powers and duties of the Governor and the operation of the executive branch are matters of great public importance. *See In re Request of Gutierrez*, 2002 Guam 1 at ¶ 28 (holding that any challenge "related to the Governor's ability to manage the executive branch, are matters of 'great public importance' as they are 'of consequence in terms of governmental function and resources.' ").

C. Normal Process of Law Causes Undue Delay

The anticipated delay through the normal processes of law must be "excessive or inappropriate" as compared to the process of law through the filing of a request for declaratory judgment under 7 GCA § 4104. *Id.* at ¶ 29. Title "7 GCA § 4104 was intended to provide a fast track for the initiation of cases before the Supreme Court of Guam so that rulings could be obtained on important issues of law without time consuming litigation in the inferior court." *Id.* (citation omitted).

The Governor in his request states that "[i]f the matter is first brought before the Superior Court of Guam ... a decision is unlikely for several months. The government's current financial condition will not permit several months of delay." Request for Declaratory Judgment, p. 3 at ¶ 10.

The court finds that a resolution of the questions relating to the interpretation of law and the powers and duties of the Governor of Guam require a speedy resolution and thus, the Governor has satisfied this jurisdictional requirement.

In accordance with the foregoing, having determined that the request involves a matter of great public interest, that the normal processes of law would cause undue delay, and that the relief requested falls within our jurisdiction under 7 GCA § 4104, the court hereby accepts the Governor's request for declaratory judgment for consideration pursuant to Rule 27 of the Guam Rules of Appellate Procedure.

SO ORDERED, this 1st day of July, 2003.

/s/
F. PHILIP CARBULLIDO
Chief Justice

IN THE SUPREME COURT OF GUAM

No. CRQ03-001

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

[STAMP: RECEIVED
JUL 07 2003 3:01PM
ATTORNEY GENERAL'S OFFICE]

DECLARATION OF ARTEMIO B. ILAGAN IN SUPPORT OF GOVERNOR FELIX CAMACHO'S REQUEST FOR DECLARATORY JUDGMENT

I, Artemio B. Ilagan, declare that:

1. I am the Director of the Department of Revenue and Taxation ("DRT"), Government of Guam.

2. The Real Property Tax Division of the Department of Revenue and Taxation is responsible for compiling, on or before September 1 each tax year, a Tax Roll identifying all taxable properties by legal lot description, owners of record, appraised and assessed values and corresponding tax assessments.

3. The mass appraisal method of valuation is primarily used to determine the appraised value of taxable property on Guam. The last reappraisal of taxable properties was completed in 1993. The updated values were applied against all properties beginning in tax year 1995.

4. The government of Guam spent approximately $ 1.5 million to conduct the 1993 revaluation.

5. Improvements and additions and destruction and/or demolitions of real property and improvements are reviewed

annually by the Real Property Tax Division and adjustments to the values of the taxable properties are made accordingly.

6. Such annual adjustments are made using the Assessment Valuation Manual prepared for the Department of Revenue and Taxation by Cowell & Co., Inc., real estate consultants, in 1994. A true and correct copy of the Assessment Valuation Manual is attached as Exhibit "A."

7. Cowell & Co, Inc. was retained by the government of Guam in 1993 to complete the 1993 revaluation. The 1993 revaluation involved valuing all taxable real property, land and improvements, for ad valorem tax purposes. In conjunction with the study, a detailed computerized valuation system was developed and incorporated into the existing computer system of the Department of Revenue and Taxation.

8. The computerized valuation system was used during the 1993 revaluation and is currently used by the Real Property Division. The computerized valuation system allows the Real Property Division to prepare individual property valuation analysis reports ("PVA") for all properties on Guam and is used in conjunction with an inspection check list that was developed as part of the 1993 revaluation. The PVA provides details to the valuation of the property and shows the value conclusion. A copy of a form inspection checklist is attached as Exhibit "B."

9. Since 1995, the Department of Revenue and Taxation has lacked the funding to perform of the triennial valuations called for by 11 G.C.A. § 24306. Absent adequate funding, the Real Property Tax Division lacks the mechanism to conduct the triennial valuations. Accordingly, since 1995 the Department of Revenue and Taxation has been determining the value of property in Guam based on annual adjustments to the 1993 revaluation for property that has been improved or suffered loss. Additionally, since 1995 valuations of real property in Guam have been adjusted based on assessment alterations by the Board. Such adjustments and alterations are made by the Department of Revenue and Taxation and the Board of Equalization pursuant to 11 G.C.A. § 24307 and 11 G.C.A. § 24501 et seq., respectively.

10. The process with respect to revaluing property because of destruction/demolitions generally works as follows: A taxpayer reports to the Real Property Division that his home was demolished by a natural disaster or other cause, or the Real Property Division receives a demolition permit from the Department of Public Works. A property tax appraiser then conducts a site investigation to confirm the destruction/demolition. If it is confirmed that the improvement was demolished, the property tax is adjusted accordingly.

11. The process with respect to valuing improvements on existing buildings or the construction of new buildings generally works as follows: Occupancy permits are submitted to the Real Property Tax Division for clearance. *See* the Real Property Tax Clearance form attached as Exhibit "C." A property tax appraiser then conducts a site investigation to confirm the renovation/addition or new construction. To aide in his appraisal, the tax appraiser uses an inspection checklist form (referred to above) and fills out a Property Record and Appraisal Card. *See* the Property Record and Appraisal Card attached as Exhibit "D." Appraisals of new buildings are based on construction costs determined as part of the 1993 valuation. Appraisals of renovated buildings are based on construction costs determined as part of the 1993 valuation, less depreciation up to 1993 using a depreciation schedule created as part of the 1993 revaluation. *See* the construction cost schedule and depreciation schedule at pages 37 and 39 of Exhibit "A."

12. With respect to land values, the direct market comparison approach based on 1993 market values derived from the 1993 valuation is employed by the DRT. As part of the 1993 triennial valuation, detailed land value maps were formulated that indicate land values on a dollar per square meter basis for various locations throughout the island. Estimated unit rate land values were determined based on analysis of existing market data and considering location, accessibility, utilities available, zoning, general topography and other pertinent factors.

13. Adjustments to appraised values are also made by the Appraisal Branch for technical errors in the computation of the value of the land and/or building. For example, errors in the type of structure (concrete versus wood) or land or building area can be corrected by the Appraisal Branch after a site inspection is completed.

14. Value adjustments to the 1993 revaluation are also made by the Board of Equalization (the "Board"). Taxpayers can appeal assessments by filing an appeals application with the Board between September 15 and October 15 each year. Taxpayers requesting value adjustments must fill out an Application for the Board of Equalization. *See* Exhibit "E." Taxpayers are allowed to present their case to the Board during hearings. An appellant can make a case for readjustment by giving oral testimony of a prior appeal by an adjacent property owner, by submitting classified advertisements of comparable sales or by submitting an appraisal of his/her property. The Appraisal Branch Supervisor is also given an opportunity to explain how the value conclusion was reached and assessment determined.

15. The Board from the last administration consisted of 3 members. They are Joseph R. Ada (term expired 06/06/01), Frederic A. Leon Guerrero (term expired 02/16/03), Frederico W. Mendiola (term expires 06/06/05—has not been replaced). The last seat was not filled. Governor Camacho has appointed three new members to the Board to replace those whose terms have expired. They are Cato Camacho, Jon Bargfrede and Elmore Cotton. These appointees are awaiting confirmation.

16. In Tax Year 2002, the Real Property Division received 57 Board of Equalization appeal applications. Of those appeals, approximately six represent condominium/multi-family residences that may translate to roughly 300 individual accounts.

17. There are about 236 pending appeal applications for tax year 2001, with approximately 300 to 500 individual accounts affected.

18. There are approximately 6 to 10 pending appeal applications for tax year 2000. There are no pending appeal applications from years prior to 2000.

19. The Tax Rolls are certified by the Board on or about October 31 each year.

20. Attached as Exhibit "F" is a true and correct copy of the certified tax rolls for tax years 1994 through 2002.

21. As of the date the 2002 Tax Rolls were certified by the Board (October 31, 2002) there were 58,884 buildings and land parcels assessed by DRT.

22. As of the date the-2002 Tax Rolls were certified by the Board, the total appraised value of buildings and land on Guam was $11.333 billion ($6.249 billion for land and $5.084 for buildings).

23. Of the $11.333 billion, $183.7 million ($173.6 for land and $10.1 for buildings) represents the appraised value of land and buildings that are 100% exempted from taxation (i.e., government, religious, and non-profit owned properties). *See* the 2002 Real Property Tax Exemption Summary attached as Exhibit "G."

24. The exemptions column of the 2002 Tax Rolls also includes rate reductions in real property tax calculated pursuant to provisions in the Guam Real Property Tax law such as 11 G.C.A. §§ 24110 and 24112.

I declare under penalty of perjury under the laws of Guam (6 G.C.A. § 4308) that the foregoing is true and correct.

Executed this 7th day of July, 2003, in Tamuning, Guam.

/s/
ARTEMIO ILAGAN

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. Case No. 03-72836

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IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO
RELATIVE TO THE INTERPRETATION AND APPLICATION
OF SECTION 11 OF THE ORGANIC ACT OF GUAM

Supreme Court of Guam
Case No. CRQ03-001

GOVERNOR FELIX P. CAMACHO,
Respondent-Petitioner,
v.

DOUGLAS B. MOYLAN,
Petitioner-Party in Interest.

**DECLARATION OF FELIX P. CAMACHO
IN SUPPORT OF MOTION TO EXPEDITE**

From the Supreme Court of Guam

I, Felix P. Camacho, hereby declare as follows:

1. I am the duly-elected Governor of Guam. If called as a witness in this matter, I could and would competently testify as follows:

2. I took office in January 2003.

3. The Government of Guam and its people face severe economic challenges. In the last few years, Guam's unemployment rate has skyrocketed while the Government of Guam has lost approximately $100 million in revenue.

4. These economic hardships are the result of a series of devastating events that have savaged the Island's tourism industry, which accounts for 60% of Guam's revenue.

5. Prior to 9/11, the severe economic recession in Asia had caused correspondingly steady and severe declines in Guam tourism rates. The 9/11 terrorists attack caused the previously steady decline to take a severe downward turn as many Asian tourists became unwilling to engage in international travel, especially to any part of the United States.

6. The severity of the down-turn after 9/11 caught many Island businesses off-guard. The loss in revenue forced many businesses to lay-off employees, and forced many others into bankruptcy. This had a corresponding effects on the tax revenues of Guam.

7. In July 2002, just as it appeared that Guam's tourism industry was on the road to recovery, Guam was hit by a major typhoon. Five months later, a record-setting super-typhoon struck the Island in December of 2002. Guam was left devastated.

8. This did not end the barrage. In the winter and spring of 2003, the Guam economy faced the triple blows to international tourism in Asia caused by SARS, the war in Iraq, and increased tensions with North Korea.

9. My administration has been compelled to address the economic crisis in Guam through harsh austerity measures. This has included imposing a 32 hour work week for thousands of government employees, and withholding payment to vendors, tax-payers, and utilities. It has also included substantial cut-backs to a number of vital government programs, including education, public safety, health, and social services.

10. All of this is occurring at a time when the revenue shortfalls are contributing to Island-wide water shortages

and power black-outs. These major utility problems affect not only our community, but also the significant U.S. military bases located on Guam.

11. The issuance of the bond at issue in this litigation is a key step towards re-igniting the economic recovery of Guam and ensuring the continued funding of critical government programs. The bond will permit funding that is badly needed for Guam's schools, its public safety and health systems, and its social services. The bond also will permit the government to issue millions in overdue tax refunds, money that then will be infused into the Guam economy.

12. The bond also include money earmarked for the utility companies. This will permit the needed repairs to the Island's power and water infrastructure. It also will permit those utilities to comply with federal court orders requiring new environmental protections in the operations of those utilities. Absent the bond funding, the utilities are unlikely to be able to comply with the court orders, and could face substantial fines that can only worsen their financial condition.

13. Thus, because so much depends on the bond measure, an expedited determination by this Court is an absolute necessity for the people of Guam and the Government of Guam.

I declare under penalty of perjury under the laws of Guam and the United States that the foregoing are true and correct to the best of my knowledge and belief.

Executed this 3rd day of November, 2003 in Tamuning, Guam.

/s/
FELIX P. CAMACHO

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. Case No. 03-72836

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

Supreme Court of Guam
Case No. CRQ03-001

GOVERNOR FELIX P. CAMACHO,
Respondent-Petitioner,
v.

DOUGLAS B. MOYLAN,
OFFICE OF THE ATTORNEY GENERAL,
Petitioner-Party in Interest.

DECLARATION OF FELIX P. CAMACHO IN SUPPORT OF RENEWED MOTION TO EXPEDITE

From the Supreme Court of Guam

I, Felix P. Camacho, hereby declare as follows:

1. I am the duly-elected Governor of Guam. If called as a witness in this matter, I could and would competently testify as follows:

2. Guam, continues to face economic hardship as it seeks to recover from the severe damage done to its Japanese tourism based economy by September 11, 2001, SARS, a super-typhoon that caused record damage to the island,

and a decade-long recession in Japan that only recently has shown signs of improving.

3. Although Guam's economy is now rapidly improving due to sizeable increases in its tourism market, its need for government of Guam bonds at in this case has not lessened because repairs still must be made to an infrastructure that suffered greatly in recent years.

4. The government of Guam, as well as certain Guam utilities potentially face daily fines under consent decrees due to their inability to finance projects to correct breaches of environmental law.

5. Many residents (and schools) in the south of Guam still face days (and sometimes weeks) without a regular water supply due to Guam's inability to finance repairs to that system.

6. Guam's sole civilian hospital urgently needs to be replaced, and currently offers half as many beds per capita as the average mainland hospital.

7. Guam's public high schools have delayed admission to over a hundred students because of the inability to accommodate them.

8. Guam has already lost millions of dollars in future interest payments due to interest rate increases in the last year while this litigation has been pending.

I declare under penalty of perjury under the laws of Guam and the United States that the foregoing are true and correct to the best of my knowledge and belief.

Executed this 3rd day of November, 2004 in Hagatna, Guam.

/s/
FELIX P. CAMACHO

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-72836

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D.C. No. CR-03-00001-CRQ
District of Guam, Agana

DOUGLAS B. MOYLAN,
Petitioner,

v.

FELIX P. CAMACHO,
Respondent.

ORDER

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

In response to the renewed motion to expedite, filed on December 8, 2004, the parties are informed that no opinion in this case can issue until the case of *Santos v. People of Guam*, Case No. 03-70472, is decided, clarifying our continued certiorari jurisdiction over decisions from the Supreme Court of Guam.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-72836

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D.C. No. CR-03-00001-CRQ
District of Guam, Agana

DOUGLAS B. MOYLAN,
Petitioner,

v.

FELIX P. CAMACHO,
Respondent.

ORDER

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

Submission of this case is withdrawn and deferred pending a ruling in *Santos v. People of Guam*, No. 03-70472.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-72836

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D.C. No. CR-03-00001-CRQ
District of Guam, Agana

DOUGLAS B. MOYLAN,
Petitioner,

v.

FELIX P. CAMACHO,
Respondent.

ORDER

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

This case is hereby resubmitted effective February 1, 2006.